

### REMARKS

In response to the examiner's rejection of claims 1, 3-12, 17-20, 25-26, 29 and 33-42 as being anticipated by US Patent No. 6,585,633 to Vitali et al. ("Vitali"), the rejection of claims 1, 3-23, 25-26 and 29-42 as being obvious over Vitali in view of US Patent Application Publication No. US 2002/0022781 to McIntire et al. ("McIntire") and the rejection of claims 1 and 25-28 as being obvious over Vitali in view of US Patent No. 6,347,443 to Coniglione ("Coniglione"), Applicant respectfully traverses the rejections because: 1) Vitali does not anticipate claims 1, 3-12, 17-20, 25-26, 29 and 33-42 because each element is not found in Vitali for the reasons set forth below; and 2) the combination of Vitali in view of McIntire or Coniglione do not teach or suggest each element of the claims for the reasons set forth in the prior response filed by Applicant to the prior office action which is incorporated herein by reference, but not repeated.

#### **Claims 1, 3-12, 17-20, 25-26, 29 and 33-42 – Vitali**

##### Claim 1

In the response to arguments filed by Applicant, the examiner has reiterated his anticipation rejection to this claims and further pointed out that: 1) Vitali in Figure 1 discloses a parabolic shaped headpiece; 2) Figure 26 clearly shows the placement of the radioisotropic components inside of the body chamber (separated by gaps); and 3) the components disclosed in Vitali including the brachytherapy needles of Figure 32 and 33 are loaded and adapted for implantation of radioisotropic seeds into the body via the brachytherapy needles and loaded seed configurations. *See Office action at 6-7.* Applicant addresses each of these incorrect assertions made by the examiner below and therefore claim 1 is not anticipated by Vitali.

##### **Alleged Parabolic Shaped HeadPiece in Figure 1**

Applicant requests that the examiner specifically point out the alleged parabolic surface shown in Figure 1 of Vitali because Applicant is unaware of any "parabolic surface defining a body chamber" as set forth in claim 1.

##### **Figure 26 of Vitali – Radioisotropic Components**

While the examiner is correct that Figure 26 shows the placement of radioisotropic components inside of the body chamber (separated by gaps), Figure 26 does not show "a radioisotropic component inside the body chamber and separated from the parabolic surface in at

least one location by a gap” as set forth in claim 1 for at least the reason that Vitali does not disclose the parabolic surface defining a body chamber as set forth above. Furthermore, for the sake of argument, if the examiner believes that the headpiece of Vitali is parabolic shaped (which it is not) as he stated in the office action, Vitali still does not disclose that radioisotropic components are inside the parabolic surface defining a body chamber (since there are no radioisotropic components inside of the headpiece of Vitali) and nor that the radioisotropic components are separated from the parabolic surface in at least one location by a gap (since any radioisotropic components in Vitali are not separated from the headpieces in at least one location by a gap.) Thus, Vitali, as argued previously, still does not disclose at least this claim element.

**Figures 32-33 of Vitali – Adapted for Implantation into a Live Body**

While it is true that the brachytherapy needles of Figure 32 and 33 are loaded and adapted for implantation of radioisotropic seeds into the body via the brachytherapy needles and loaded seed configurations as asserted by the examiner, the claims require that the claimed medical device (including the parabolic surface defining a body chamber; the radioisotropic component inside the body chamber and separated from the parabolic surface in at least one location by a gap) being adapted for implantation into a live body. While the seeds disclosed in Vitali may be implanted into a live body, the seed cartridge assembly 11 in Figure 1 (which allegedly has the parabolic surface) and the brachytherapy needles in Figures 32-33 of Vitali are not designed to the implanted into a live body as required by the claim. Thus, Vitali, as argued previously, still does not disclose at least this claim element.

Therefore, Vitali as argued previously, does not disclose several elements of claim 1 and is not anticipatory prior art.

Claims 3-12, 17-20, 25-26, 29 and 33-42

These claims all depend from claim 1 and the anticipation rejection of these claims must be withdrawn for the same reasons as claim 1.

**Claims 1, 3-23, 25-26 and 29-42 - Vitali in view of McIntire**

Claim 1

The examiner has asserted that this claim is obvious over Vitali in view of McIntire. As argued previously, each element of claim 1 is not taught or suggested by Vitali or McIntire and

therefore the examiner has not established a prima facie case of obviousness and the obviousness rejection must be withdrawn. Applicant disagrees with the examiner's responses for the same reasons as set forth above for the anticipation rejection for Vitali and because McIntire does not teaches or suggests the claim elements as admitted by the examiner. Therefore, the obviousness rejection must be withdrawn.

Claims 3-23, 25-26 and 29-42

These claims all depend from claim 1 and the obviousness rejection of these claims must be withdrawn for the same reasons as claim 1.

**Claims 1 and 25-28 - Vitali in view of Coniglione**

Claim 1

The examiner has asserted that this claim is obvious over Vitali in view of Coniglione. However, each element of claim 1 is not taught or suggested by Vitali or Coniglione and therefore the examiner has not established a prima facie case of obviousness and the obviousness rejection must be withdrawn. Applicant disagrees with the examiner's responses for the same reasons as set forth above for the anticipation rejection for Vitali and because Coniglione does not teaches or suggests the claim elements as admitted by the examiner. Therefore, the obviousness rejection must be withdrawn.

Claims 25-28

These claims all depend from claim 1 and the obviousness rejection of these claims must be withdrawn for the same reasons as claim 1.

**CONCLUSION**

In view of the above, it is respectfully submitted that Claims 1, 3-23, 25-42 and 45 are allowable over the prior art cited by the Examiner and early allowance of these claims and the application is respectfully requested.

The Examiner is invited to call Applicant's attorney at the number below in order to speed the prosecution of this application.

Appl. No. 10/828,539  
Reply dated December 5, 2008  
Reply to Office Action mailed September 8, 2008

The Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 07-1896.

Respectfully submitted,

DLA PIPER US LLP

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